

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION NO 598 OF 1998

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be
allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the
fair copy of the Order ?

4. Whether this case involves a substantial
question of law as to the interpretation of
the Constitution of India, 1950 of any Order
made thereunder?

5. Whether it is to be circulated to the Civil
Judge?

CARE AND CARE MEDICINES PVT LTD
VERSUS
CYPEX PHARMA PVT LTD

Appearance:

MR PR NANAVATI for the Petitioner
MR MC BHATT for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of Judgment : 04/04/2000

C A V JUDGMENT

#. This revision application is directed against the

order passed by the learned Auxiliary Chamber Judge, Court No.19 of City Civil Court dated 21/8/96 in Civil Misc. Application No.637/92 whereunder the application filed by the defendant-petitioner for setting aside the ex-parte decree passed in the Summary Suit No.3562/92 was came to be rejected.

#. The plaintiff-respondent filed Summary Suit No.3562/92 against the defendant-petitioner under the provisions of Order 37 of the Code of Civil Procedure, 1908 for the recovery of Rs.3,43,863.80. On the application of the defendant-petitioner the learned trial court granted leave to defend the suit to him on the condition of depositing a sum of Rs.50,000/= in the court within the stipulated period. This order has been passed by the learned trial court on 31/12/1993. The defendant-petitioner deposited Rs.10,000/=. On 2/7/94 he has deposited further Rs.10,000/=. As the condition subject to which the leave to defend the suit is granted to the defendant-petitioner was not complied, the petitioner-respondent has taken out the summons for judgment and on 17/2/95, the learned trial court passed a decree in the suit. On 4/9/95, the defendant-petitioner filed an application for setting aside the ex-parte decree. This application was came to be rejected under the impugned order. Hence this Civil Revision Application.

#. The learned counsel for the petitioner submitted that the plaintiff-respondent has got summons for judgment and obtained a decree in the suit by concealing the material fact that prior to 17/2/95 the defendant-petitioner deposited Rs.20,000/=. It has next been contended that the defendant-petitioner has now deposited the full amount of Rs.50,000/= and the learned trial court should have accepted his application filed for setting for ex parte decree.

#. Learned counsel for the plaintiff-respondent contended that the fact that Rs.20,000/= has been deposited by the defendant-petitioner was in the notice of the court on the day on which the summons for judgment was taken out and the decree has been passed. It has next been contended that the defendant-petitioner has not fulfilled the condition subject to which the leave to defend the suit has been granted by the trial court. The suit has to be decreed and rightly it has been decreed by the court below. The deposit of Rs.30,000/= after the decree has been passed in the suit by the trial court has no consequence.

#. I have given my thoughtful consideration to the rival contentions made by learned counsel for the parties.

#. It is not in dispute that the condition subject to which leave to defend the suit has been granted was not fulfilled by the defendant-petitioner. The deposit of Rs.30,000/= after the decree made in the suit is hardly any consequence and help to the defendant-petitioner.

#. From the facts of the case, I find that after filing of the application under Order 37 Rule 3 of the Civil Procedure Code the petitioner has prayed for stay of execution of decree and on the condition that he will deposit Rs.30,000/= the stay would have been granted by the court. This application for stay of the execution of the decree has no relevance or effect on the merits of the decree passed by the court below. To stay the execution of decree for some time on giving of judgment-debtor is willingness to deposit this amount will not be taken as if the court has permitted to him to deposit the deficit of Rs.30,000/=.

#. Whatever amount deposited by the petitioner will be considered at the time of execution of the application and adjusted against the decretal amount. It is not the case where the defendant-petitioner was not given an opportunity to defend in the suit. This opportunity to defend the suit was given on the condition and when that condition was not fulfilled, the court has rightly passed the decree in the suit. The defendant-petitioner failed to give out any ground much less a sufficient ground and explanation for non-deposit of Rs.50,000/= in time. The learned trial court has rightly held that the defendant-petitioner has failed to make out a ground for the grant of the relief as prayed for in the application under Order 37 Rule 3 of the Code of Civil Procedure. The learned trial court has discretion under Order 37 Rule 3 of Code of Civil Procedure to set aside the ex-parte decree passed in a summary suit and in the facts of this case it not committed any irregularity in exercise of its jurisdiction not to exercise this discretion in favour of the petitioner. It is a case where the defendant-petitioner is making an attempt to delay execution of decree. The fact that the condition subject to which the leave to defend the suit has been granted to it was not complied which goes to show that it has no case on merits. Where the party has no case on merits it makes all attempts and create all sorts of grounds to delay the execution of decree passed in summary suit.

In the result, the Civil Revision Application fails and the same is dismissed with costs.

(S.K.Keshote, J.)

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